

**FILED**  
**JUDGE'S OFFICE**  
**U.S. DISTRICT COURT E.D.N.Y.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

23 2012 ☆

ARI WEITZNER and ARI WEITZNER, M.D., P.C.,  
Individually and on Behalf of All Others Similarly Situated,

*Plaintiffs,*

CV 1

**CLASS-ACTION  
COMPLAINT**

**3668**  
**BRODIE, J.**

## CYNOSURE, INC.,

*Defendant.*

**FILED** **MANN, M.J.**  
**IN CLERK'S OFFICE**  
**US DISTRICT COURT E.D.N.Y.**

★ JUL 12 2012 ★

## **PRELIMINARY STATEMENT**

## BROOKLYN OFFICE

1. Plaintiffs bring this action individually and as a class action on behalf of the class, whose Members are: all persons and entities to which Defendant transmitted one or more facsimiles advertising the commercial availability or quality of property, goods, or services, without having obtained prior express invitation or permission to transmit said facsimiles, other than Defendant, its officers, employees, and representatives, and their families (the "Class"), at any time during the period beginning on September 15, 2002 until the present (the "Class Period").

2. Plaintiffs' claims arise under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C), and the regulation, 47 C.F.R. § 64.1200(a)(3), promulgated thereunder (hereinafter referred to collectively as "TCPA" unless otherwise indicated). Plaintiffs seek, individually and on behalf of the other Class Members, statutory damages, injunctive relief, attorney's fees, and costs.

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction under 28 U.S.C. § 1331.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

**PARTIES**

5. Plaintiff Ari Weitzner, is a physician who maintains his office at 1302 Kings Highway, 3rd Floor, Brooklyn, New York 11229.

6. Plaintiff Ari Weitzner, M.D., P.C., is a professional corporation organized and existing under the laws of New York, and maintains its principal place of business at 1302 Kings Highway, 3rd Floor, Brooklyn, New York 11229.

7. Defendant, Cynosure, Inc., was, and is at all relevant times herein, a corporation organized and existing under the laws of Delaware, and maintains its principal place of business at 5 Carlisle Road, Westford, Massachusetts 01886.

**FACTS**

8. On or about April 7, 2004, Defendant transmitted a facsimile to Plaintiffs that advertised the commercial availability or quality of property, goods, or services (a copy of this facsimile is annexed hereto as Exhibit "A").

9. On or about April 20, 2004, Defendant transmitted a facsimile to Plaintiffs that advertised the commercial availability or quality of property, goods, or services (a copy of this facsimile is annexed hereto as Exhibit "B").

10. On or about June 9, 2004, Defendant transmitted a facsimile to Plaintiffs that advertised the commercial availability or quality of property, goods, or services (a copy of this facsimile is annexed hereto as Exhibit "C").

11. On or about July 27, 2004, Defendant transmitted a facsimile to Plaintiffs that advertised the commercial availability or quality of property, goods, or services (a copy of this facsimile is annexed hereto as Exhibit "D").

12. Plaintiffs did not give Defendant prior express invitation or permission to transmit

the aforementioned facsimile.

13. During the Class Period, Defendant transmitted unsolicited advertisements via facsimile to more than 10,000 recipients, of which Plaintiffs were two.

14. Defendant did not seek or obtain prior express invitation or permission from any of the aforementioned recipients to transmit the aforementioned facsimiles.

#### **FIRST CAUSE OF ACTION**

15. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "14" inclusive of this Complaint as if fully set forth herein.

16. The transmission of facsimiles to Plaintiffs and Members of the Class, as set forth above, violated 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(3).

17. Based upon the foregoing, Plaintiffs and Members of the Class are entitled to statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B).

18. Based upon the foregoing, Plaintiffs and Members of the Class are entitled to an Order, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendant from violating 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(3).

#### **CLASS ALLEGATIONS**

19. Plaintiffs bring this action as a Class Action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the class as defined in paragraph "1."

20. The Members of the Class are so numerous that joinder of all Members is impracticable.

21. There are more than 10,000 individuals and entities whose claims are similar to Plaintiffs' claims; and, furthermore, Plaintiffs' claims are typical of the claims of absent Members of the Class. Members of the Class have sustained damages arising out of Defendant's wrongful

conduct in the same manner that Plaintiffs have sustained damages from Defendant's unlawful conduct.

22. Plaintiffs would fairly and adequately protect the interests of the Class. Plaintiffs have retained competent litigation counsel. Plaintiffs have no interests that are antagonistic to, or in conflict with, the Members of the Class. Indeed, Plaintiffs' interests are, for purposes of this litigation, coincident with the interests of the other Members of the Class.

23. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the Class is so numerous that joinder of all Members is impracticable, and because the damages suffered by most of the individual Members of the Class are too small to render prosecution of the claims asserted herein economically feasible on an individual basis, the expense and burden of individual litigation makes it impractical for Members of the Class to adequately address the wrongs complained of herein. Plaintiffs know of no impediments to the effective management of this action as a class action.

24. Common questions of law and fact predominate over questions which affect only individual Members of the Class. Among the questions of law and/or fact common to the Class are:

- (i) whether the facsimiles contained "advertisements";
- (ii) whether Defendant's conduct amounted to willful or knowing conduct;
- (iii) whether Plaintiffs and the Members of the Class are entitled to statutory damages for each violation;
- (iv) whether Plaintiffs and Members of the Class are entitled to statutory damages for willful or knowing violations of the TCPA; and
- (v) whether Plaintiffs and Members of the Class are entitled to injunctive relief.

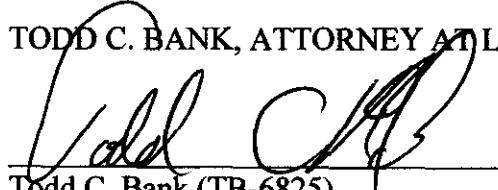
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment against Defendant as follows:

- (a) Awarding Plaintiffs and the other Members of the Class statutory damages of \$500.00 pursuant to 47 U.S.C. §§ 227(b)(3)(B), with interest as allowed by law;
- (b) Awarding Plaintiffs and the other Members of the Class up to \$1,000.00 of statutory damages pursuant to 47 U.S.C. §§ 227(b)(3)(C), in addition to the statutory damages prayed for in the preceding paragraph, if the Court finds that Defendant's violations were made knowingly or willfully, with interest as allowed by law;
- (c) Issuing an Order, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendant from violating 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(3); and
- (d) Awarding to Plaintiffs the costs and disbursements of this action, and reasonable attorney's fees, and such other and further relief as this Court deems just and proper.

Dated: July 10, 2012

TODD C. BANK, ATTORNEY AT LAW, P.C.

  
\_\_\_\_\_  
Todd C. Bank (TB-6825)  
119-40 Union Turnpike, Fourth Floor  
Kew Gardens, New York 11415  
(718) 520-7125

OSBORN LAW PC  
295 Madison Avenue, 39th Floor  
New York, New York 10017  
(212) 725-9800

*Counsel to Plaintiffs*

## **EXHIBIT A**

# Aesthetic Workshop

for Physicians and Health Professionals

## Topics of Discussion Can Include

- ▷ Laser Facial
- ▷ Non-Ablative Facial Treatments
- ▷ Hair Removal - All Skin Types
- ▷ Leg and Facial Vein Treatment
- ▷ Treatment for Sun-damaged Skin
- ▷ Wrinkle Reduction
- ▷ Tx for Rosacea & Pigmented Lesions
- ▷ Marketing Essentials - Step-by-step instruction on promoting your practice

## Date:

Saturday, May 15, 2004

## Location:

Trumbull Marriott  
180 Hawley Lane  
Trumbull, CT 06611

## Time:

9:00 AM - 2:00 PM

For further details, or to register by phone call your Cynosure Representative:

Chris Aronson at 800-886-2966 x440

or fax back this form to 978-256-6556  
or register at [www.cynosurelaser.com](http://www.cynosurelaser.com)

## Registration and Fees:

Register before event  
by fax or on-line for FREE TUITION  
FAX: 978-256-6556  
[www.cynosurelaser.com](http://www.cynosurelaser.com)

Cynosure, Inc  
10 Elizabeth Drive  
Chelmsford, MA 01824

If you have received this fax in error  
or wish to be removed from the list,  
please call 800-973-2348.

YES! Please register me for this workshop.  
 I am unable to attend, but would like more information.  
FAX BACK TO: 978-256-6556

Name \_\_\_\_\_

Practice Name \_\_\_\_\_

Specialty \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Light fare will be served compliments  
of Cynosure, Inc. Course Certification  
and workshop manuals are provided.

Dates and agenda subject to change  
without notice. For latest updates  
visit [www.cynosurelaser.com](http://www.cynosurelaser.com).

 **CYNOSURE®**  
Where art and science meet.

## **EXHIBIT B**

# Aesthetic Workshop

for Physicians and Health Professionals

## Topics of Discussion Can Include

- ▷ Laser Facial
- ▷ Non-Ablative Facial Treatments
- ▷ Hair Removal - All Skin Types
- ▷ Leg and Facial Vein Treatment
- ▷ Treatment for Sun-damaged Skin
- ▷ Wrinkle Reduction
- ▷ Tx for Moles & Pigmented Lesions
- ▷ Marketing Essentials - Step-by-step instruction on promoting your practice

## Registration and Fees:

Register before event:  
by fax or on-line for FREE TUITION  
FAX: 978-256-6536  
[www.cynosurelaser.com](http://www.cynosurelaser.com)

Cynosure, Inc.  
10 Elizabeth Drive  
Chelmsford, MA 01824

If you have received this fax in error  
or wish to be removed from the list,  
please call 800-973-2348.

## Date:

Sunday, May 23, 2004

## Location:

Romeo & Juliette  
Laser Hair Removal Center  
38 East 57th Street  
Between Park & Madison Avenue  
3rd floor  
New York, New York 10022

## Time:

11:00 AM - 3:00 PM

For further details, or to register  
by phone call your Cynosure  
Representative:

Rob Rountry at 800-888-2986 x429

or fax back this form to 978-256-6556  
or register at [www.cynosurelaser.com](http://www.cynosurelaser.com)

YES! Please register me for this workshop.  
 I am unable to attend, but would like more information.  
FAX BACK TO: 978-256-6556

Name \_\_\_\_\_

Practice Name \_\_\_\_\_

Specialty \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Light fare will be served compliments  
of Cynosure, Inc. Course Certification  
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Dates and agenda subject to change  
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## **EXHIBIT C**

**Aesthetic Procedures That Build Practices****Think Inside the Box**

## ***Grow Your Practice with Apogee Elite: One System, Two Wavelengths – The Complete Aesthetic Solution.***

The Apogee Elite offers the two most optimal wavelengths for hair removal:

- Our 755 nm Alexandrite treats skin types I-IV
- The 1064 nm Nd:YAG is ideal for skin types IV-VI and tanned skin

The versatile Elite successfully treats:

- Facial and leg veins
- Pigmented lesions
- The blush of rosacea, sun-damaged skin and more

Offer your patients the most popular aesthetic procedures. Laser hair removal is the 2<sup>nd</sup> most popular cosmetic procedure after Botox Injections. Laser treatment of leg veins grew 222% over 2002.\*

(\*ASAPS data 2002)

**For more information on how Cynosure can help you grow your practice, call 800.886.2965 or fax back to 978.256.6556.**

- YES, have a Cynosure representative call me
- YES, send me information about a free workshop in my area
- YES, I would like a free in-office demonstration

Name \_\_\_\_\_

Specialty \_\_\_\_\_

Facility \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

If you received this fax in error or to be removed from the list, please call 877.666.2442.

### **Cynosure's Turn-key Program to Building Your Practice**

- Lasers to Grow Your Practice
- Marketing Support
- Clinical Training
- Service Support

**Also send me information on:**

- Intense Pulsed Light
- Pulse Dye Lasers
- Alexandrite Lasers
- Nd:YAG Lasers
- Cellulite LaserDermatology™

### **Cynosure, Inc.**

10 Elizabeth Drive  
Chelmsford, MA 01824

**Toll Free: 800.886.2965**

**Fax: 978.256.6556**

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## **EXHIBIT D**

**Aesthetic Procedures That Build Practices*****Grow your practice one application at a time with the VStar, pulse dye laser from Cynosure.*****Open your practice to more patients...****VStar treatments include:**

- Acne
- Angiomas
- Erythematous scars
- Facial vein
- Granulomas
- Hemangiomas
- Port Wine Stains
- Psoriasis
- Rosacea
- Sun-damaged skin
- Stretch marks
- Warts
- Wrinkles

From vascular applications to cosmetic treatments, the VStar pulsed dye laser is the most versatile laser in any practice. It consistently delivers more power than competitive lasers, while providing more efficacious and faster treatments.

Powerful enough to treat acne, angiomas, port wine stains, veins and warts; gentle enough for LaserFacials and the only laser safe enough to treat even days-old infants.

Offer your patients state of the art treatment for vascular and cosmetic applications and let the power of the VStar work for your practice.

*"Of the pulse dye lasers I have used, the VStar is the most effective and is preferred by our patients."*

Bruce E. Katz, MD, PC

*"You can take away my lasers, but don't take my pulse dye."*

John McCraw, MD

*"The V Star laser provides my practice the only pulse dye laser with enough power to truly explore the long pulse (20 and 40 millisecond) treatment of all types of vascular lesions."*

Emil Tangheidi, MD

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 YES, send me information about a free workshop in my area  
 YES, I would like a free in-office demonstration

Name \_\_\_\_\_

Specialty \_\_\_\_\_

Facility \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

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Chelmsford, MA 01824

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